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COMMISSION ON HUMAN RIGHTS

Fiftieth session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 March 1994 at 3 p.m.

Chairman: Mr. ENDO (Japan)

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (E/CN.4/1994/10 and Corr.1, E/CN.4/1994/11; E/CN.4/1994/CRP.1)

1. Mrs. PINTO (Independent Expert), introducing her report on the situation of human rights in Guatemala (E/CN.4/1994/10 and Corr.1), said that the election of the Human Rights Procurator, Ramiro de León Carpio, as President of the Republic on 6 June 1993, following the coup d'état led by President Elías himself, had marked the first step in a process that was to lead to the establishment in Guatemala of a democracy in which all citizens could effectively exercise their rights. Another welcome development had been the signing, on 9 January 1994, of a framework agreement for the resumption of negotiations between the Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG). The agreement should be implemented in the course of the year, with the essential objective of restoring peace after 33 years of civil war, of which the indigenous populations had been the main victims.

2. The repatriation of refugees had resumed on 8 December 1993, and last January 1,015 persons had returned peacefully to Chaculá in the department of Huehuetenango. The international community, through UNHCR, the UNDP Project for Displaced Persons, Refugees and Returnees in Central America (PRODERE-Guatemala), and various non-governmental organizations (NGOs) such as Médecins du monde, together with member States of the International Returnees Support Group (GRICAR), had played a full part in the return and repatriation process. Another positive development had been the resumption of the dialogue between the representatives of the Communities in Resistance (CPR) of La Sierra and Ixcán and the Government, which Professor Tomuschat had recommended and which should be encouraged. That decision by the CPRs was very welcome, and the Government should see to it that they were not persecuted and could live normally with the assistance of the civilian authorities in all sectors. It was to be hoped that the recently signed agreement signalled the end not only of the conflict that had been tearing Guatemala apart for the past 33 years but also of all the resulting human rights violations, and that all detained persons and the civilian population would be treated in conformity with the provisions of the Geneva Conventions, which Guatemala had ratified but still refused to implement. It would, in particular, be necessary to clear up the disappearance of Efraín Bámaco Velázquez (Commander Everardo) following his capture by the army and the situation of the 35 other members of the URNG whom the army was holding prisoner, although it did not acknowledge doing so.

3. The extreme militarization of Guatemalan society was another consequence of the domestic conflict. In fact, it was the army that exercised power, not only because of its size but also because of the competence and efficiency of its institutions, which made its presence in civilian life indispensable. The participation of certain elements of the army in acts constituting serious human rights violations and in certain social disturbances already cited in Mr. Tomuschat's earlier reports had been confirmed by the testimony of a former agent of the military intelligence services (G-2), currently in exile, with whom Mrs. Pinto had spoken. Certain cases of desertion gave reason to believe that not only the people but also certain members of the armed forces wanted a demilitarization of society. That state of affairs must lead to an

in-depth review of the role of the army in democracy and a redefinition of its functions vis-à-vis civilian authority. The extreme militarization created a climate of terror, and all human rights activists and members of trade union organizations had reason to fear that the threats to which they were regularly subjected might actually be carried out, as in the case of Mario Polanco, leader of the Mutual Support Group who had been kidnapped on 10 December 1993 and tortured by masked individuals. The Government had attempted, in conformity with the recommendations made by Mr. Tomuschat in his latest report (E/CN.4/1993/10), to curb that militarization, notably by converting the National Police into a civilian security corps under the Ministry of the Interior. However, there was still a mobile military police corps under the authority of the army and the presidential staff, and the general intelligence services were still not independent of the military intelligence services, whose functions had not been reviewed as recommended by Mr. Tomuschat. In addition, the military courts continued to exercise virtually unlimited powers. A lot needed to be done at the legislative level too; the law on military service was enforced in a discriminatory fashion, since most of the persons who actually performed military service were indigenous, and were usually recruited by force. In practice, military service constituted a mechanism for social control administered in discretionary fashion by the military commissioners (comisionados militares), who came under the army's Intelligence Services Directorate. Quite clearly measures must be taken to put an end to that situation; if Guatemalan society was to be demilitarized, a start must be made by reducing the size of the army.

4. Much of the violence perpetrated in Guatemala was also due to the civilian self-defence patrols (PACs) set up by the military regime in the 1970s. Their special military-civilian status in practice limited the action of the police, thereby contributing to their impunity. According to certain reports, those patrols had been responsible for the extrajudicial execution of Jorge Carpio Nicolle, head of the National Centrist Union and first cousin of the President of the Republic. Although the existence of a domestic conflict was cited in justification of the setting-up of those patrols, there was no justification for their continued existence in areas that had not seen conflict; and if, as was claimed, patrol members were volunteers, it was difficult to explain the pressure exerted on local residents to induce them to join the patrols. The very existence of the patrols was incompatible with human rights standards and democratic principles, and they should be disbanded immediately. Pending the introduction of the necessary legislative and administrative measures to that end, the Government must ensure that no new patrols were set up and must call upon the army to monitor existing patrols and disarm those operating in areas where abuses had been committed.

5. Although their numbers had decreased, cases of enforced disappearance, extrajudicial execution and torture continued to be reported throughout the country. It should be noted in that regard that in December 1993, following a recommendation by Mr. Tomuschat, a special investigation service for such crimes had been set up within the National Police. There was also reason to welcome the decision by the Court of Cassation to uphold Helen Mack's request for an investigation focusing on the presumed murderers of the anthropologist Myrna Mack. A full inquiry must also be carried out into the kidnapping of Maritza Urrutia, Diana Ortíz and Carmen Valenzuela and the disappearance of

Francisco Guarcas Cipriano and Mynor Luna Lima. The investigation into the extrajudicial execution of Jorge Carpio Nicolle had still not been completed and had been further delayed by the fire on 19 January 1994 in the judicial archives of Santa Cruz del Quiché, where the case file had been kept. Those responsible for the arbitrary detention and torture of the trade unionists LuzBía Salam and Violeta Heidi Migoya Calderón must also be punished. All the cases cited showed that the administration of civilian justice was ineffective and very politicized at the higher levels, a fact which, apart from the huge power enjoyed by the military courts, could only encourage impunity. Nevertheless, measures had been taken to improve the administration of justice in the framework of the recently adopted constitutional reforms; particular mention might be made of the setting-up of machinery to depoliticize the election of judges and the adoption of a new Code of Criminal Procedure that conferred a leading role on the Public Prosecutor's Office. Strengthening the independence of the judiciary should also be accompanied by sweeping reform of the prison system, which should begin with the strict enforcement of the Standard Minimum Rules for the Treatment of Prisoners.

6. The armed confrontation, militarization and social violence were accompanied by widespread extreme poverty, which the current Government recognized. The extreme poverty, which above all affected the rural areas and peasant and indigenous communities, was reflected in alarming infant and maternal mortality rates; those populations did not have access to clean water, health-care services, education or employment. It was for the Government to demonstrate the political will to take the requisite effective measures to remedy that situation, because destitution also constituted a human rights violation. The indigenous inhabitants who accounted for some 70 per cent of Guatemala's total population were not only poor but also deprived of all the rights normally guaranteed them by the Constitution. The indigenous communities were not officially recognized and were excluded from the legal system, and their customs and traditions were completely ignored. Their members were therefore unable to exercise their economic, social, cultural or political rights, except in a very symbolic fashion. Moreover, they had been especially affected by the historical problem of the unequal distribution of land, which had been aggravated by the return of the refugees. President León Carpio's decision to grant 17,000 property titles to landless peasants and the drawing-up of a plan for the legalization of irregular titles would not be enough to create a more egalitarian society in which the value of the land for the majority of the population was recognized.

7. However, the efforts made by the Guatemalan Government to improve the human rights situation were praiseworthy. She commended the Human Rights Procurator and his assistants for their work and welcomed the creation, on the basis of a recommendation by Mr. Tomuschat, of the Presidential Commission to coordinate the policy of the Executive in that area, which had not yet demonstrated its effectiveness. The measures taken to facilitate recognition of the legal personality of civil associations and trade union organizations and guarantee the irremovability of trade union representatives showed that it was possible to take action in a country like Guatemala: where there was a will there was a way. But it must be borne in mind that the particular structural and economic problems facing the country were not due solely to the current Government. Everything, including Guatemala's geographic characteristics, acted to prevent Guatemalans from knowing anything about what

had happened in their country in the various periods of its history. The disclosure of the truth was a prerequisite for the establishment of peace and democracy.

8. She concluded by expressing appreciation to the Guatemalan Government for giving her all the necessary means to carry out her work. She also thanked all the Guatemalan citizens and organizations, and the UNRG, for their invaluable cooperation. She called on the Commission to help Guatemala in its efforts to restore democracy and respect for human rights, notably by continuing to monitor the situation in that country in order to show the Guatemalan Government and people that the international community was not indifferent to their suffering.

9. Mr. NIKKEN (Independent Expert), presenting his report on the situation of human rights in El Salvador (E/CN.4/1994/11), said that the action of the international community had played a crucial role in initiating a peace process aimed at building a fully democratic society in that country. He welcomed the untiring efforts of the Secretary-General of the United Nations to bring closer together the apparently irreconcilable positions of the Salvadoran Government and the Frente Farabundo Martí para la Liberación Nacional (FMLN). Had fraternal countries and the Security Council not followed closely the negotiations leading to the signing of the peace agreements, and without the scrupulous monitoring of the implementation of those agreements by the United Nations Observer Mission in El Salvador (ONUSAL), the process would have encountered insurmountable obstacles. The opposition of certain sectors of society to what they had considered to be an excessive international presence must not overshadow the fact that that presence had been synonymous with security for many Salvadorans who had been politically and socially marginalized during the war.

10. He regretted, however, that he had been unable to visit El Salvador as planned from 9 to 15 January 1994 because of the contradictory attitude of the Salvadoran Government, as described in detail in paragraphs 23 to 25 of his report. Suffice it to say that the Government had at first refused to issue a visa to the professional from the Centre for Human Rights who had been expected to accompany him on his visit until it received an answer to the note it had sent to the Centre on 14 December 1993, although that note had not contained any specific request and had simply announced that the Government intended to ask the United Nations Legal Service for an opinion. It had not agreed to his visit until 10 January, in other words the day after the visit had been scheduled to begin, whereas the request for the visit had been made 11 weeks earlier. Finally, on 14 January, the Mission of El Salvador to the United Nations Office at Geneva had requested the Centre for Human Rights to await the legal opinion of the Legal Service before organizing his mission, whereas in a further note bearing the same date but addressed to him personally it had regretted that he had cancelled his visit and expressed surprise that he had decided to prepare a report without visiting the country. In his view, that exchange of contradictory notes could only be interpreted as a failure on the part of the Salvadoran Government to cooperate, not only with him but also with the body which had given him his mandate. Not only had the Government done everything to prevent him from visiting El Salvador, but it had even held him responsible, along with the Centre for Human Rights, for the fact that the visit had not taken place.

11. Having made those points, he referred to the situation of human rights in El Salvador. The process begun with the signing of the peace agreements had been losing momentum as President Christiani's term of office had come to an end. Although certain positive developments had been noted, such as the elimination of enforced disappearances, the progress described in the previous report had slowed perceptibly. The number of cases of torture and extrajudicial executions had even increased in 1993. There was every reason to believe that those executions had been carefully targeted murders committed by criminal organizations. It was therefore essential for the group which had been set up to investigate the murders allegedly committed by illegal armed gangs, and whose activities were coordinated by the Director of the ONUSAL Human Rights Division, to receive the full support it needed in order to be able to shed light on the gruesome activities of the death squads.

12. The administration of justice continued to leave much to be desired, and the recommendations previously made by himself and approved by the Commission to strengthen the independence of the judiciary had not been implemented. Nor had there been any perceptible improvement in the area of economic, social and cultural rights, and the lack of progress in implementing the agreements concluded, in particular on the distribution of land, had created tension in various sectors of society. Like the Director of the ONUSAL Human Rights Division in his ninth report, he could only conclude, to his great regret, that the situation of human rights in El Salvador had in fact deteriorated seriously.

13. It was therefore important to strengthen the institutions created under the peace agreements, in particular the Office of the National Counsel for the Defence of Human Rights, which must play a pivotal role in the future. It must be given all the resources and support it needed in order to carry out its task properly, and he appealed for international cooperation in that regard.

14. The National Civil Police was another of the pillars upon which hopes were placed, in the agreements, for improving respect for human rights, because its primary function was to protect and guarantee the free exercise of the rights and liberties of individuals. However, its organization departed in certain respects from the provisions of the peace agreements, and the attitude of the army in the area of public security continued to be unsatisfactory. That had enabled the FMLN, when its clandestine arsenals had been discovered, to argue as an excuse that it could not be certain that the army would actually comply with the peace agreements. Clearly, that was not a valid argument, because it was inadmissible to claim a right to reciprocity in non-compliance with agreements relating directly to the protection of, and respect for, the integrity and dignity of the individual.

15. Furthermore, virtually none of the substantive recommendations submitted in 1993 by the Commission on the Truth set up to investigate the acts of violence committed in the 1980s had been put into effect. That was the case in particular with those relating to the organization and membership of the judiciary, recognition of the mandatory jurisdiction of the Inter-American Court of Human Rights, accession of El Salvador to other international human rights instruments, and compensation of the victims of violations and their families.

16. In view of the above, he could only conclude that Commission on Human Rights resolution 1993/93 had not been complied with satisfactorily. The international community must therefore continue to consider the human rights situation in El Salvador, all the more so as political murders had taken place and the implementation of the peace agreements was encountering major obstacles.

17. It should also be stressed that the purpose of the Commission's special machinery, advisory services and, more generally, the machinery for examining the human rights situation in certain countries was not to level accusations at a particular Government. What was in fact involved were manifestations of the solidarity of the international community, aimed at assisting societies, peoples and individuals who were victims of violations of their basic rights. That observation was particularly pertinent with regard to the relationship that had developed between himself and the Salvadoran Government in the course of the past year. It would appear that the Government wanted to secure the termination of the Independent Expert's mandate and the deletion of El Salvador from the Commission's agenda. That tendency on the part of the Salvadoran Government to circumvent the action of the international machinery for human rights protection was confirmed by its refusal to agree to a visit by the Inter-American Commission on Human Rights or to join the other States of Central America in recognizing the jurisdiction of the Inter-American Court of Human Rights. The Salvadoran Government had also opposed the submission by the ONUSAL Human Rights Division of a report to the World Conference on Human Rights. On the other hand, having taken note of his report, it had requested that ONUSAL should be invited to the sessions of the Commission so that it could present its report, thereby hoping to find contradictions between the two reports.

18. Any decision by the Commission that led to a relaxation of watchfulness concerning the human rights situation in El Salvador would be a very grave mistake and would constitute a regrettable precedent. The Commission should not hesitate to reaffirm its decisions and ensure that they were complied with.

19. Mr. MENDOZA (Observer for El Salvador) reminded the Commission that an error had been made in operative paragraph 8 of resolution 1993/93. The original Spanish of the draft resolution had referred to a request to extend the appointment of the Independent Expert. However, that text had been altered on the basis of the French version of the draft resolution. Alerted by the Salvadoran Government, the Economic and Social Council had adopted a resolution consistent with the original Spanish of the draft. However, in the annotated agenda prepared by the Secretary-General, the authentic version of the resolution had not been taken into account. His Government had therefore sought clarification as to the interpretation of that paragraph. It had sent a letter to the Centre for Human Rights agreeing to the visit of the Independent Expert and asking the Centre's Legal Service for an opinion on the paragraph in question. On 7 January 1994, two days prior to the Independent Expert's visit, his Government had sent a fax to the Centre for Human Rights giving its authorization for the visit. With regard to the request for a visa for the professional from the Centre for Human Rights to accompany the

Independent Expert, that request had specified that a professional was to accompany the Special Rapporteur. His Government had replied by seeking clarification on the subject but, unfortunately, the note had been sent back by the Centre for Human Rights without the laissez-passer of the professional concerned. It would be unreasonable to conclude from the above that his Government did not want to cooperate with the international community on human rights, given that it was hosting a United Nations mission and had invited international observers to monitor the elections in March.

20. It was also incorrect to say that the situation of human rights in El Salvador had deteriorated. It should be pointed out that since his ninth report, which had in fact noted a worsening of the situation, the Director of the ONUSAL Human Rights Division had subsequently stated, in other reports, that there had been no evidence or indication in support of allegations that the Salvadoran State had been deliberately conducting a policy of human rights violations. In the same report, the measures taken by the Government in the framework of the gradual establishment of a democratic political system and the rule of law had been noted. President Christiani had committed himself to respecting human rights and ensuring that peace reigned in the country. The Salvadoran people had chosen peace, democracy and human rights and hoped that the international community would participate objectively in that process.

21. Mr. NIKKEN (Independent Expert) said that the drafting errors which had appeared in resolution 1993/93 had been recognized as such and had been pointed out to the Economic and Social Council, which had adopted the resolution in its original wording. Consequently, there had been no reason not to have replied to the request for a visit, which had been made within the relevant time-limit. The fax referred to by the Salvadoran delegation, although dated 7 January, had not been sent until 10 January, as indicated by the date on the document. With regard to the request for a visa for the professional from the Centre for Human Rights who had been expected to accompany him, he reiterated that El Salvador had asked for a reply to its note sent to the Centre for Human Rights on 14 December 1993, although that note had not in fact contained any question.

22. In any event, there was absolutely no intention to accuse the Salvadoran Government or to hold it responsible for human rights violations. But it must be concluded that, despite its praiseworthy efforts, the situation of human rights had not taken a positive turn in that country, and it would therefore be premature for the Commission to terminate its activities there.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

(a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

(b) NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(c) COORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(d) HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS (continued)

(agenda item 11) (continued) (E/CN.4/1994/34, 35, 36 and Add.1, 37, 38, 39 and Corr.1, 40, 41, 42, 43 and Add.1, 44 and Add.1, 45 and 74; E/CN.4/1994/NGO/2, 3, 4 and 38; A/48/579)

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 19) (continued) (E/CN.4/1994/73/Add.1, 75, 76 and Add.1, 77 and Add.1, 78 and Add.1 and 109; A/CONF.157/23)

23. Mr. GULDERE (Observer for Turkey) said that the United Nations system for the promotion and protection of human rights should focus more on the democratization of political systems and less on internal conflicts. Democratization was a long-term process in which developing countries had to contend with enormous difficulties. In a democracy, governance was a complex and difficult matter. Moreover, in a hostile international environment, democratization placed countries at the mercy of outside forces which exploited domestic weaknesses. For example, ethnic groups were manipulated and provoked into instigating destabilizing armed conflicts in order to defend so-called rights.

24. In spite of those difficulties, however, democracy was the sole form of government that ensured respect for human rights and freedoms; moreover, the development of modern nationalism, intended to impede the extreme forms of ethnic nationalism, was possible only in a democracy. But no country could expect to become democratic on the basis of "ethnic rights". The United Nations system for the protection and promotion of human rights should therefore give priority assistance to States embarking upon the democratization process, while preventing the manipulation of ethnic groups under the false pretext of self-determination.

25. The second priority of the United Nations system for the protection and promotion of human rights should be to focus on existing internal conflicts. In those types of conflict, armed groups almost always resorted to terrorist methods. Terrorism was nothing other than the killing of innocent civilians in order to shock public opinion and destabilize the political order; it could not be condoned on any account. But in certain human rights circles, and even in the Governments of certain democratic countries, terrorism was approached in an equivocal fashion: it was condemned, but the Governments of the countries concerned were advised to take certain measures to meet the demands of ethnic groups. In reality, that constituted scarcely concealed support for terrorism.

26. Given that terrorism was an assault against innocent people, the mutual respect that usually existed between enemies in an ordinary war disappeared. That was why human rights violations occurred more frequently in conflicts in which terrorists were involved. A number of measures therefore needed to be taken in that context: international human rights law should continue to apply to conflicts in which terrorists were involved, and should cover all

aspects of those conflicts; the killing of innocent people should be regarded as the most serious of human rights violations and should thus be the subject of monitoring and reports, notably by NGOs; a special rapporteur should be appointed by the Commission to consider situations created by terrorists; terrorism as a method of combat should be outlawed, and terrorist acts should constitute crimes against humanity, in line with subparagraph (c) of Nürnberg Principle VI; allegations of violations by security forces should only be examined in an overall context and not separately; acts committed by individuals and groups should be monitored by special rapporteurs in the same way as violations by States. Lastly, when a country carried out armed intervention or indirect aggression that threatened the territorial integrity or political independence of another country under the terms of Article 2 (4) of the Charter, that should not be regarded as a human rights violation; consequently, the question should remain outside the mandate of the Commission.

27. Mr. FALLET (International Committee of the Red Cross) said that ICRC had received a mandate to ensure the implementation of international humanitarian law; that law and human rights were complementary in many respects. Unfortunately, every day armed conflicts around the world proved that respect for the individual was often flouted. In that connection, the holding of the International Conference for the Protection of War Victims (30 August-1 September 1993), which had been attended by senior representatives of 160 States, and the very positive reactions to the report prepared by ICRC for that Conference had demonstrated that the international community did not accept the current situation as inevitable and intended to react.

28. Many specific proposals had been made during the Conference, and each one deserved in-depth consideration at the meeting of intergovernmental experts that was to be convened by Switzerland in early 1995. Certain subjects which would be addressed there touched upon activities aimed at encouraging and developing respect for human rights. Thus, in order to prevent violations, it was essential for States to adopt at the national level legislation and any other measures likely to facilitate the implementation of international humanitarian law. To be respected, that law must above all be known, and it must be taught as widely as possible, particularly within the armed forces. The promotion, teaching and dissemination of human rights were also necessary to guarantee respect for the individual, help reduce violence and prevent conflicts. In that connection, ICRC welcomed Commission on Human Rights resolution 1993/49, which emphasized the need for the secretariat to harmonize its public information activities with those of other relevant international bodies, notably ICRC, for the dissemination of information on international humanitarian law.

29. ICRC had also been pleased to note the adoption by the General Assembly of the "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (resolution 47/135 of 18 December 1992). The principles and goals of the Declaration were of great relevance for the activities of the international Red Cross and Red Crescent movement, one of whose fundamental principles was impartiality, at a time when many countries were confronted with the question of minorities. On the question of internally displaced persons, ICRC was pleased that it had been the subject of

concern in the international community for several years. In that context, the urgent need to enforce international humanitarian law should be reaffirmed. ICRC welcomed the efforts of the Secretary-General's special representative, Mr. Deng, who had given a great deal of attention to international humanitarian law in his report (E/CN.4/1994/44).

30. He also drew members' attention to the dangers of certain procedures referred to in connection with the treatment of internally displaced persons. For one thing, it was planned to compile rules ensuring specific protection for such persons. However, in a situation of armed conflict, all provisions protecting civilians which accounted for some three quarters of the written rules of international humanitarian law, must be taken into consideration. Thus, displaced persons could benefit from the right to receive care if they were injured or ill, the right to impartial assistance if they were starving, the right to orderly living conditions if they were deprived of freedom, and the right to basic legal guarantees if they were prosecuted for reasons relating to an armed conflict; their dignity and physical integrity must be respected in all circumstances. It was not certain that the compiling of such a large number of rules was really useful. Furthermore, a new instrument on displaced persons which aimed to cover all possible situations would only be a simplification and would thus undermine the protection from which they were meant to benefit.

31. From the observations made by the representative of the Secretary-General, Mr. Deng, and intergovernmental and non-governmental organizations it was clear that they were in favour of the development of humanitarian law; ICRC shared the view that the displacing of persons must be avoided wherever possible and machinery guaranteeing the implementation of humanitarian law strengthened. All acts of terrorism were prohibited under articles 2, 37 and 51 of Protocol I additional to the Geneva Conventions, common article 3 of the Geneva Conventions and article 4 (para. 2 (d)) of Protocol II. ICRC monitored the implementation of international humanitarian law, which in most cases required the punishment of the perpetrators of acts of terrorism but also accorded them humane treatment when they were arrested, thereby also ensuring protection of, and assistance to, victims.

32. Mr. SEGER (Observer for Switzerland) said that he wished to put forward a number of ideas on the coordinating role that should be played by the Centre for Human Rights and on women's rights and the rights of internally displaced persons. The creation by the General Assembly of the post of High Commissioner for Human Rights, reporting to the Centre for Human Rights, represented a crucial step towards greater respect for human rights and fundamental freedoms. It was essential that all United Nations bodies in the area concerned - international treaty monitoring bodies and the various rapporteurs, working groups and independent experts - should be able to work together and coordinate their activities. His delegation hoped that when future budgetary programmes were adopted, provision would be made for continued efforts to strengthen the Centre's capacities, notably with regard to the implementation of the Programme of Action adopted in Vienna.

33. One of the areas in which better coordination was needed was that of the basic rights of women. In that context, his delegation welcomed the holding of joint working meetings of officials from the Centre for Human Rights, the

Division for the Advancement of Women and the United Nations Development Fund for Women, and also the decision to set up within the Centre a focal point to coordinate all activities relating to women's rights. His delegation also welcomed the intention of the Centre to play an active part in the preparatory meetings for the Fourth World Conference on Women. In that same spirit, closer cooperation was needed between the Commission on Human Rights and the Commission on the Status of Women. The time had come, given the adoption by the General Assembly of the Declaration on the Elimination of Violence against Women, to appoint a special rapporteur to study that subject. That mandate should be entrusted to a woman of internationally recognized competence in that area.

34. Probably the most endangered women and girls were refugees, who had little means of defence against the violations they suffered. In that context, he wanted to thank in particular the High Commissioner for Refugees, Mrs. Ogata, who had created special programmes and established guidelines to ensure their protection. In a similar context, the fate of millions of internally displaced persons posed one of the greatest challenges the international community had to face. His delegation was very pleased to learn from the High Commissioner for Refugees that she considered that task to be a matter of priority and was prepared to continue to accept requests from the Secretary-General and the General Assembly for support for those particularly vulnerable persons.

35. The interim report of the representative of the Secretary-General appointed to study the question of internally displaced persons was of great interest, even though it showed that the normative principles and institutional machinery were not effective enough to ensure adequate protection for those persons. Switzerland had always been convinced that the effective observance of the principles of law took precedence over the creation of new instruments. However, the main condition for attaining that goal was that the legal objectives which had been set should actually become a reality around the world. For that reason, Switzerland, as the depositary State of the Geneva Conventions for the protection of war victims and their two additional protocols, had worked untiringly to strengthen the universal nature of those instruments. Thus, at the International Conference for the Protection of War Victims, held in Geneva in August 1993, States had expressed their determination to apply, clarify and, where necessary, envisage developing further the existing law on armed conflicts, in particular non-international armed conflicts, in order to ensure more effective protection for their victims.

36. Notwithstanding the difficulties, it should be stressed, as the High Commissioner for Refugees had done, that effective protection of displaced persons was nevertheless possible in the current legal framework, provided that the responsible authorities had the political will and were prepared to cooperate with the humanitarian organizations. The compilation of relevant provisions, which fell under the mandate of the Special Rapporteur, would undoubtedly help to clarify the degree of protection that displaced persons were entitled to claim. He expressed the hope that the problems raised in the report of the representative of the Secretary-General would be treated in depth and within the framework of an appropriate budget.

37. Mr. LARSEN (Observer for Denmark), speaking on behalf of the Nordic countries, said that he wished to make a number of observations on advisory services and technical assistance in the field of human rights. The Vienna Declaration and Programme of Action stressed the importance of those activities, particularly in certain areas, such as assistance in the conduct of free and fair elections, the building of democratic institutions, and support for minorities and vulnerable groups. Assistance to indigenous peoples would also be of great importance. The role of the Centre for Human Rights in coordinating such activities within the United Nations system was mentioned in the Vienna Declaration and Programme of Action. The Nordic countries reiterated that they considered the implementation by Governments and the United Nations of decisions on advisory services and technical cooperation to be of the utmost importance. In that context, they welcomed the appointment of a Board of Trustees for the Voluntary Fund for Technical Cooperation, which would help to improve the Fund's administration. It was unfortunate that the Board of Trustees would not be able to report to the Commission at the current session. The Nordic countries hoped that the Centre for Human Rights would provide it with the necessary resources and administrative support.

38. The budgetary situation of advisory services and technical assistance had improved, as was apparent from the regular budget adopted for the biennium, 1994-1995 and the relatively high level of contributions to the Voluntary Fund in 1993. The resources currently available to the Centre should be used effectively to improve the quality of projects, and their preparation and evaluation, and to provide the best possible response to requests for support from Governments. With its additional resources, the Centre must now work to improve the management of advisory services and technical assistance, and ensure greater transparency and better definition of priorities. To enable the Board of Trustees to monitor all Voluntary Fund projects, the relevant information must be available in a standardized form, and their execution must be consistent with standard procedures. The Nordic countries believed that it was essential for the Board of Trustees to have a role in setting priorities and taking decisions on projects financed by the Voluntary Fund, and that a review of administrative procedures and the utilization of existing financial and human resources in the Centre was urgently needed, with the assistance of external management expertise. They supported the measures recently adopted by the Centre to carry out a comprehensive needs assessment for countries requesting assistance. That policy must be conducted in cooperation with other agencies and organizations or with individual donor countries. Maximum use must be made of the needs assessments already produced. Existing United Nations structures for country-level activities should also be employed, in particular the UNDP Resident Representatives. A comparison of the respective advantages of the various organizations and agencies must also be made in order to decide upon a division of labour. The role of NGOs in advisory services and technical assistance must not be overlooked, since they often had unique expertise and knowledge of the situation in the countries concerned.

39. The new High Commissioner for Human Rights and the Centre for Human Rights had crucial roles to play in coordinating human rights activities within the United Nations system. The setting-up of the infrastructures needed to ensure respect for human rights in countries requesting assistance

required concerted efforts by the United Nations development bodies and financial institutions, as well as by Governments. The Nordic countries reaffirmed their support for advisory services and technical assistance, but they also remained firmly committed to administrative reforms, which would allow more efficient use of resources. Their level of support for the Centre for Human Rights would depend upon those improvements (transparency, setting of priorities, administrative efficiency and accountability).

40. Mr. SLIPCHENKO (Observer for Ukraine) said it was highly significant that the World Conference on Human Rights had focused special attention on improving the coordination of United Nations bodies and machinery dealing with the promotion and protection of human rights. The Conference had clearly noted that the efficiency of the United Nations bodies and specialized agencies in that field had often been undermined by overlapping of their spheres of competence and respective activities. The use of financial and other resources also suffered from that situation, thus calling into question the ability to respond adequately to the many challenges in the area of human rights and fundamental freedoms. For that reason, the Conference had urged all the bodies and agencies in the United Nations system to strengthen and rationalize their activities. His delegation hoped that the High Commissioner for Human Rights would give priority to improving coordination in the United Nations system, in accordance with General Assembly resolution 48/141.

41. The Centre for Human Rights already had the necessary qualifications for that purpose and could, in particular, set up a unit to study the administrative aspects of coordination and assessment activities and initiate a dialogue with the relevant bodies and agencies in order to prepare joint studies on advisory services and technical assistance which clearly reflected the relationship between development, democracy and human rights. The Centre should accordingly serve as a kind of "think-tank", proposing alternative and innovative approaches for further improving the effective enjoyment of human rights and fundamental freedoms. In his delegation's view, the discussions on the Centre's coordinating role currently under way in the Commission must be brought fully to the attention of the General Assembly, which in turn should consider ways of improving interaction between the human rights bodies and agencies within the United Nations system.

42. The problem of displaced persons was one of the most urgent facing the international community. To solve it, the international community would have to transcend the boundaries of formal definitions and controversy concerning the scope and applicability of existing legal provisions referred to in the report of the representative of the Secretary-General (E/CN.4/1994/44). His delegation was very concerned about the fate of millions of displaced persons, especially as many thousands of ethnic Ukrainians currently resided in regions in which armed conflicts might break out at any time, if they had not already done so, for example in the territory of the former USSR and the former Yugoslavia. The situation of certain groups of displaced persons was particularly complicated, notably the populations deported under the Stalinist regime from their traditional habitat in Ukraine during the Second World War and its aftermath. Hundreds of thousands of Crimean Tartars, Germans, Greeks and Bulgarians who, through the vagaries of history, had become displaced persons within the frontiers of the former USSR wanted to return to their native land but had found themselves in a legal limbo to which none of the

internationally accepted definitions relating to displaced persons applied. They had not therefore qualified for the relief programmes administered by the specialized agencies of the United Nations.

43. It was also clear that the question of the ethnic Ukrainians wishing to return to their native land could not be resolved by his Government without appropriate international assistance, including assistance to the countries of the former USSR, where they currently lived. The problem placed a great strain on the Ukrainian economy, which also had to contend with persons displaced because of the dangerous ecological situation. Seven hundred thousand persons directly affected by the Chernobyl disaster were still waiting to move out of the heavily contaminated areas in Ukraine, and those who had been resettled in other regions of the country also needed government assistance. The situation of all those persons could not be improved without the aid of international organizations in general and the United Nations specialized agencies in particular. There was an urgent need for the international community to address the crisis of displaced persons in a comprehensive, effective and durable manner.

44. Mrs. KRASNOHORSKA (Observer for Slovakia) described to the Commission the Slovak National Human Rights Centre, which had been in operation since 1 January 1994, with headquarters in Bratislava. The Centre's objectives and arrangements for cooperating with the national centres of other countries had been explained during the Seminar for the Directors of National Human Rights Centres, held in Bratislava in June 1993 in the framework of the World Conference on Human Rights. The Centre was conceived as a human rights training, information and documentation agency and had close ties with similar institutions abroad and international organizations with a view to becoming a regional centre with activities in a number of countries of the former Eastern bloc. Her Government and the Slovak National Council guaranteed its independence in the area of the protection of basic rights and freedoms.

45. The Slovak authorities wished to thank the representatives of the United Nations, the Centre for Human Rights and the Slovak Project Coordinator for their important support, which had made execution of the project possible. They also thanked the Government of the Netherlands for its financial assistance in the setting-up and operation of the Centre. She concluded by expressing her conviction that the authority of the High Commissioner for Human Rights would serve as a great incentive to the activities of human rights centres, and not least the Slovak National Centre.

46. Ms. GOMES (Observer for Portugal) said that her delegation endorsed the principle, enshrined in the Vienna Declaration and Programme of Action, that the rights of women were an inalienable, integral and indivisible part of universal human rights. The question of women's rights must finally be regarded as a priority political issue, and not merely a social phenomenon, as it had been for so long. Women constituted half of humanity and were entitled to full enjoyment of human rights and fundamental freedoms. Without that half of humanity, the very principle of universality was undermined. The rights of women must be integrated into all United Nations human rights activities. Her delegation was pleased that a "women's focal point" had already been established within the Centre for Human Rights and commended the Assistant

Secretary-General for Human Rights for that initiative. Financial and human resources must follow: that was one of the priorities which must be addressed by the High Commissioner for Human Rights and all genuinely committed Governments. The Centre for Human Rights must become the focal point for defending the rights of women and adopt a thematic approach to human rights abuses directed specifically against women. It must also cooperate with the Division for the Advancement of Women, as well as with the High Commissioner for Refugees and the Department of Public Information. In a statement made at the beginning of the session, the High Commissioner for Refugees had reported on the practical experience acquired by UNHCR with regard to the problem of refugee women and girls.

47. Cooperation within the secretariat, and between the various mechanisms for the defence of human rights - special rapporteurs and working groups of the Commission and Sub-Commission, advisory services, treaty bodies - and mechanisms specific to women, namely, the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women, must be strengthened. It was particularly important to ensure coordination with the latter Committee, which had done outstanding work on the root causes and forms of discrimination against women. Portugal strongly encouraged the Commission's mechanisms systematically to include in their reports gender-disaggregated data and to take those data into account in their conclusions on the nature of abuses and also in the examination of specific allegations. They should therefore gather indicators on violations of the rights of women, and also seek to analyse the root causes of abuse primarily directed against women and its linkage with the status of women in society. Specific remedial action should be recommended.

48. Violence against women often constituted a form of torture or ill-treatment, therefore falling within the scope of the mandate of the Special Rapporteur on torture. Her delegation would appreciate it if the Special Rapporteur reported specifically on torture and ill-treatment directed against women (rape and sexual assault), which reflected their diminished social and legal status compared with that of men and perpetuated their subordinate condition. However, the phenomenon of violence against women was wider, including marital violence, female infanticide, killings associated with honour, dowry murder and other violence related to traditional practices. The elimination of all those practices required measures at the national and international levels, as the Sub-Commission's Special Rapporteur, Mrs. Halima Warzazi, had so clearly pointed out.

49. Portugal thus supported the proposal of Canada to appoint a special rapporteur on violence against women. In so doing, the Commission would recognize the urgent need seriously to address the various forms of violence perpetrated against women in public and in private, which amounted to violations of their most basic rights and, above all, their right to life. The chief targets of violence were women caught up in situations of armed conflict, women members of a minority, indigenous women, migrant women and refugee women. The special rapporteur on violence against women should give particular attention to the situation of women nationals of countries which had not yet ratified the Convention on the Elimination of Discrimination against Women.

50. Her delegation hoped that the fourth World Conference on Women, to be held in Beijing in September 1995, would enable progress in implementing the Vienna Declaration and Programme of Action to be measured in regard to women's rights. It was unfortunate that in all countries, rich or poor, the violation of women's rights and discrimination against women were directly connected to their status in society, whereas the entire community would benefit from their participation, both quantitative and qualitative, in life in society. Her delegation was convinced that if women participated in life in society on an equal footing with men, the world would be more peaceful and more cooperative. Promoting awareness of women's rights must start at a very early age, and in that regard she cited the Committee on the Rights of the Child, which had pointed out the importance of giving special assistance to girl children, which would have an impact at all levels. When the girl child was looked upon not as a daughter, sister, future wife or young mother but as a full-fledged individual with her own recognized dignity, freedom and rights, it might be possible to change ways of thinking and provide a lasting response to the problem of violence against women.

51. Ms. GAER (United States of America) said she wished to raise the question of the real effectiveness of the Commission on Human Rights and its working methods. Since the Commission's establishment 50 years earlier, it had proclaimed standards, produced treaties and set up mechanisms to investigate and report on human rights violations. Those mechanisms made it possible to respond, but it was not clear that they halted abuses. Over the years, they had had to contend with formidable obstacles (difficulties in obtaining the necessary information; non-cooperation - or even outright disregard - on the part of Governments; sometimes even a lack of interest on the part of the Commission itself; absence of any means of coercion other than persuasion; and a host of problems which reflected a general lack of resources).

52. But against that background of problems, there had also been grand visions for improving the working methods of the Commission and the functioning of the United Nations in the human rights field. However, none had generated such enthusiasm and hope as the idea of creating a High Commissioner for Human Rights. Costa Rica had been the first to introduce the idea formally in 1965, on the occasion of a world conference on human rights. Twenty-eight years later, that idea had finally been realized, on the occasion of another world conference. That dream having finally become reality, it was to be hoped that it would energize United Nations human rights programmes and that human rights would become one of the pillars of the system, one that promoted and protected human rights, brought serious violations before bodies able to act on them and effectively coordinated all human rights programmes in the United Nations system. That also involved assuming new responsibilities in all the activities and programmes of the Organization, including those concerning peace-keeping and humanitarian assistance; in other words, the challenge was to integrate a human rights perspective into all the work of the United Nations.

53. She had long been involved with non-governmental human rights organizations and had given much thought to ways of providing assistance and protection to those whose lives had been broken by torture, repression and killing. She had arrived at a number of conclusions, in particular that it was better to be in the field than in an office of the Centre for Human Rights

in Geneva. It was in the field that promotion, protection, education and training were most effective and truly reached those concerned and not just a few delegates or diplomats. It was equally important to be directly engaged in countries working to promote human rights and the rule of law. Consequently, the advisory services and technical assistance programmes of the Centre for Human Rights should be strengthened so that the Centre could respond promptly and effectively to requests from countries, experts and rapporteurs. The Centre for Human Rights should also be authorized to place representatives in United Nations regional offices. The Vienna World Conference had encouraged such an initiative, which should be followed up. In the short term, thanks to that initiative it would be possible to create a corps of experts within the United Nations and other international organizations, thereby actively promoting programmes to create a genuine human rights culture.

54. Pious hopes were not enough to ensure the protection of human rights. She knew how difficult it was to make bureaucracies aware of that question. However, it was possible to do so, as was apparent from the example of the Congress of the United States, which had appointed an Assistant Secretary of State to prepare annual reports, a laborious and costly task. But annual reports, which in 1993 had covered 193 countries, provided a detailed account of the situation of human rights in those countries and constituted an irreplaceable tool. It took enormous financial and human resources to advance human rights and reduce repression. Efforts should therefore be made to ensure that a greater portion of United Nations resources was devoted to human rights.

55. She paid tribute to the NGOs, invaluable partners of the United Nations but also of Governments. Those organizations served as the engines which drove Governments and international organizations to do more to protect human rights. They informed and educated the public about human rights issues; they collected and analysed information on the situation of human rights; they disseminated that information so that no one could be unaware of the violations that were committed; lastly, they prompted Governments and the United Nations to act and react. In the view of her delegation, the Centre for Human Rights could work even more closely with the NGOs. As to the Commission, it should not only analyse the reality of problems in the field, but also address its own working methods so that human rights really occupied their rightful place - at the very heart of the United Nations edifice. By taking those steps, it would be possible to alleviate the suffering of all victims of repression.

56. Mr. DEGUENE KA (Observer for Senegal) said that his country attached great importance to national institutions for the protection of human rights and technical assistance programme. It was at the national level that the implementation of standards for the protection of human rights was most tangible. In his view, the existence of effective national institutions was dependent on a number of criteria, and first and foremost a political system based on the primacy of law and respect for individual freedoms, which enabled an independent and impartial judiciary to emerge as guarantor of the proper administration of justice, and which promoted respect for public order, an essential factor in the development of a society and its institutions. The task of those national institutions was not only to advise public authorities

and promote the incorporation of human rights into education, but also to further the harmonization of national legislation and the integration of international legal instruments within that legislation. He cited several institutions which existed in Senegal, notably the National Human Rights Committee, the University Institute of Human Rights, the High Television Council and the Mediator of the Republic, the latter being required in particular to address the realization of the economic, social and cultural rights of Senegalese citizens. He also referred to the difficulties confronting those institutions, which were often obliged to interpret texts and even produce case-law.

57. The fundamental values in the area of economic and social rights were sometimes formulated in too general terms. At the Vienna World Conference, the creation of an international human rights research institute had been called for, inter alia to undertake a study on the adoption in various national systems of the rights recognized at the international level. The Secretary-General of the International Commission of Jurists had mentioned in his statement under the item on the right to development the existence of interesting case-law on economic and social rights in Senegal and other African countries. That was an enormous field to be explored for national institutions, in particular in order to place economic, social and cultural rights on a legal footing and ensure stricter implementation of the International Covenant on Economic, Social and Cultural Rights, most civil and political rights having already been adequately defined.

58. Concerning the coordinating role of the Centre for Human Rights and the technical assistance programmes, it was generally agreed that greater efficiency was needed. Some had suggested, for example, the formation of a team of experts and specialists from the Centre for Human Rights, UNHCR, the Centre for Social Development or the Department of Humanitarian Affairs, and also the competent bodies of the United Nations in the fields of cooperation and development. Such a coordinating unit would report directly to the Centre for Human Rights, to which the Vienna Programme of Action had assigned a vital role in that field and in technical assistance programmes. Others had proposed the creation of regional offices of the Centre for Human Rights to carry out in the field activities requested by States. With that in mind, his delegation proposed that the technical assistance programmes should be extended to include questions relating to the right of development and the rights of women, children, refugees, displaced persons, minorities, migrant workers and indigenous populations.

59. Lastly, his delegation thought that an effective institutional framework should be set up for consultations between NGOs and the Centre for Human Rights. In any event, there would seem to be a vital need to increase the Centre's financial, logistic and human resources so as to enable it to respond to ever growing needs. He appealed to all States to increase the regular budget of the Centre for Human Rights so that it could establish a coherent plan of action for assistance in that area.

60. Mr. PERRUCHOUD (International Organization for Migration (IOM)) said that the phenomenon of internally displaced persons, although not new, was for the first time attracting the attention of the international community. The

task of protecting and assisting displaced persons had not been assigned specifically to an international organization, but sectoral competence was exercised by various international institutions, including IOM. Their task was to provide international assistance in that area which, apart from migrants, extended to refugees and also persons displaced outside or within their country.

61. IOM activities focused on three areas: prevention (consultation services and rapid studies of potential migratory movements, so as to alert the States concerned to an imminent problem); emergency assistance, including the counting of displaced persons; safe return once the situation so permitted and, as necessary, reintegration assistance.

62. He had three comments to make on the report of the representative of the Secretary-General (E/CN.4/1994/44). First, IOM was in favour of striking a balance between the needs for protection and assistance, two aspects that he considered inseparable. Secondly, on a legal plane, he thought that it would be desirable to make a compilation of instruments in force in order to identify any gaps. His organization was prepared to cooperate in that area. It would also be desirable for the Commission to appeal for universal acceptance of instruments on the protection of the individual at all times and, in particular, in periods of armed conflict. IOM believed that a code of conduct would be useful, provided that it did not lead to a watering-down of the binding nature of existing instruments. Lastly, the question of institutional mechanisms needed continued attention, and cooperation between the various agencies of the United Nations system and others active in that area was an absolute necessity; it was important to continue on that path of cooperation, with mutual respect for the competence of each organization. He reiterated the offer of cooperation extended by his organization, which was fully prepared to contribute to the work of the Commission and of the representative of the Secretary-General.

The meeting rose at 6 p.m.